

# State of South Dakota

EIGHTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2009

543Q0225

## SENATE BILL NO. 118

Introduced by: Senator Haverly and Representative Peters

1 FOR AN ACT ENTITLED, An Act to adopt the interstate compact on educational opportunity  
2 for military children.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The interstate compact on educational opportunity for military children is hereby  
5 enacted into law and entered into with all jurisdictions legally joining in the compact, in the  
6 form substantially as follows:

7 Interstate Compact on Educational Opportunity for Military Children

### 8 ARTICLE I. PURPOSE

9 It is the purpose of this compact to remove barriers to educational success imposed on  
10 children of military families because of frequent moves and deployment of their parents by:

11 A. Facilitating the timely enrollment of children of military families and ensuring that  
12 they are not placed at a disadvantage due to difficulty in the transfer of educational  
13 records from the previous school district or variations in entrance or age  
14 requirements.

15 B. Facilitating the student placement process through which children of military families



- 1 are not disadvantaged by variations in attendance requirements, scheduling,  
2 sequencing, grading, course content or assessment.
- 3 C. Facilitating the qualification and eligibility for enrollment, educational programs, and  
4 participation in extracurricular academic, athletic and social activities.
- 5 D. Facilitating the on-time graduation of children of military families.
- 6 E. Providing for the promulgation and enforcement of administrative rules  
7 implementing the provisions of this compact.
- 8 F. Providing for the uniform collection and sharing of information between and among  
9 member states, schools and military families under this compact.
- 10 G. Promoting coordination between this compact and other compacts affecting military  
11 children.
- 12 H. Promoting flexibility and cooperation between the educational system, parents and  
13 the student in order to achieve educational success for the student.

14 ARTICLE II. DEFINITIONS

15 As used in this compact, unless the context clearly requires a different construction:

- 16 A. "Active duty" means full-time duty status in the active uniformed service of the  
17 United States, including members of the national guard and reserve on active duty  
18 orders pursuant to 10 U.S.C. section 1209 and 1211.
- 19 B. "Children of military families" means school-aged children, enrolled in kindergarten  
20 or any of the grades one through twelve, in the household of an active duty member.
- 21 C. "Compact commissioner" means the voting representative of each compacting state  
22 appointed pursuant to article VIII of this compact.
- 23 D. "Deployment" means the period one month prior to the service members' departure  
24 from their home station on military orders through six months after return to their

1 home station.

2 E. "Educational records" means those official records, files and data directly related to  
3 a student and maintained by the school or local education agency, including but not  
4 limited to records encompassing all the material kept in the student's cumulative  
5 folder such as general identifying data, records of attendance and of academic work  
6 completed, records of achievement and results of evaluative tests, health data,  
7 disciplinary status, test protocols and individualized education programs.

8 F. "Extracurricular activities" means voluntary activities sponsored by the school or  
9 local education agency or an organization sanctioned by the local education agency.  
10 Extracurricular activities include, but are not limited to, preparation for and  
11 involvement in public performances, contests, athletic competitions, demonstrations,  
12 displays and club activities.

13 G. "Interstate commission on educational opportunity for military children" means the  
14 commission that is created under article IX of this compact, which is generally  
15 referred to as interstate commission.

16 H. "Local education agency" means a public authority legally constituted by the state as  
17 an administrative agency to provide control of and direction for kindergarten and  
18 grades one through twelve in public schools.

19 I. "Member state" means a state that has enacted this compact.

20 J. "Military installation" means a base, camp, post, station, yard, center, homeport  
21 facility for any ship or other activity under the jurisdiction of the department of  
22 defense, including any leased facility, which is located within any of the several  
23 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin  
24 Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S.

1 Territory. Such term does not include any facility used primarily for civil works,  
2 rivers and harbors projects or flood control projects.

3 K. "Non-member state" means a state that has not enacted this compact.

4 L. "Receiving state" means the state to which a child of a military family is sent, brought  
5 or caused to be sent or brought.

6 M. "Rule" means a written statement by the interstate commission promulgated pursuant  
7 to article XII of this compact that is of general applicability, implements, interprets  
8 or prescribes a policy or provision of the compact, or an organizational, procedural,  
9 or practice requirement of the interstate commission, and has the force and effect of  
10 statutory law in a member state, and includes the amendment, repeal, or suspension  
11 of an existing rule.

12 N. "Sending state" means the state from which a child of a military family is sent,  
13 brought or caused to be sent or brought.

14 O. "State" means a state of the United States, the District of Columbia, the  
15 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the  
16 Northern Marianas Islands and any other U.S. Territory.

17 P. "Student" means the child of a military family for whom the local education agency  
18 receives public funding and who is formally enrolled in kindergarten or any of the  
19 grades one through twelve.

20 Q. "Transition" means:

21 (1) The formal and physical process of transferring from school to school; or

22 (2) The period of time in which a student moves from one school in the sending  
23 state to another school in the receiving state.

24 R. "Uniformed services" means the army, navy, air force, marine corps, coast guard as

1 well as the commissioned corps of the national oceanic and atmospheric  
2 administration and public health services.

3 S. "Veteran" means a person who served in the uniformed services and who was  
4 discharged or released there from under conditions other than dishonorable.

### 5 ARTICLE III. APPLICABILITY

6 A. Except as otherwise provided in subsection B, this compact shall apply to the children  
7 of:

8 (1) Active duty members of the uniformed services as defined in this compact, including  
9 members of the national guard and reserve on active duty orders pursuant to 10  
10 U.S.C. section 1209 and 1211;

11 (2) Members or veterans of the uniformed services who are severely injured and  
12 medically discharged or retired for a period of one year after medical discharge or  
13 retirement; and

14 (3) Members of the uniformed services who die on active duty or as a result of injuries  
15 sustained on active duty for a period of one year after death.

16 B. The provisions of this interstate compact shall only apply to local education agencies as  
17 defined in this compact.

18 C. The provisions of this compact shall not apply to the children of:

19 (1) Inactive members of the National Guard and military reserves;

20 (2) Members of the uniformed services now retired, except as provided in paragraph 1;

21 (3) Veterans of the uniformed services, except as provided in paragraph 1; and

22 (4) Other United States department of defense personnel and other federal agency  
23 civilian and contract employees not defined as active duty members of the uniformed  
24 services.

ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

A. Unofficial or "hand-carried" education records - In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records or transcripts - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within 10 days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

C. Immunizations - Compacting states shall allow thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Kindergarten and first grade entrance age - Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving

1 state, regardless of age. A student transferring after the start of the school year in the receiving  
2 state shall enter the school in the receiving state on their validated level from an accredited  
3 school in the sending state.

#### 4 ARTICLE V. PLACEMENT & ATTENDANCE

5 A. Course placement - When the student transfers before or during the school year, the  
6 receiving state school initially shall honor placement of the student in educational courses based  
7 on the student's enrollment in the sending state school or educational assessments conducted at  
8 the school in the sending state if the courses are offered. Course placement includes but is not  
9 limited to honors, international baccalaureate, advanced placement, vocational, technical and  
10 career pathways courses. Continuing the student's academic program from the previous school  
11 and promoting placement in academically and career challenging courses should be paramount  
12 when considering placement. This does not preclude the school in the receiving state from  
13 performing subsequent evaluations to ensure appropriate placement and continued enrollment  
14 of the student in such courses.

15 B. Educational program placement - The receiving state school initially shall honor  
16 placement of the student in educational programs based on current educational assessments  
17 conducted at the school in the sending state or participation or placement in like programs in  
18 the sending state. Such programs include, but are not limited to, gifted and talented programs  
19 and English as a second language (ESL). This does not preclude the school in the receiving state  
20 from performing subsequent evaluations to ensure appropriate placement of the student.

21 C. Special education services - (1) In compliance with the federal requirements of the  
22 individuals with disabilities education act (IDEA), 20 U.S.C.A. section 1400 et seq., the  
23 receiving state initially shall provide comparable services to a student with disabilities based on  
24 the student's current individualized education program (IEP). (2) In compliance with the

1 requirements of section 504 of the rehabilitation act, 29 U.S.C.A. section 794, and with Title  
2 II of the Americans with disabilities act, 42 U.S.C.A. sections 12131-12165, the receiving state  
3 shall make reasonable accommodations and modifications to address the needs of incoming  
4 students with disabilities, subject to an existing 504 or Title II plan, to provide the student with  
5 equal access to education. This does not preclude the school in the receiving state from  
6 performing subsequent evaluations to ensure appropriate placement of the student.

7 D. Placement flexibility - Local education agency administrative officials shall have  
8 flexibility in waiving course and program prerequisites or other preconditions for placement in  
9 courses and programs offered under the jurisdiction of the local education agency.

10 E. Absence as related to deployment activities - A student whose parent or legal guardian  
11 is an active duty member of the uniformed services and has been called to duty for, is on leave  
12 from, or immediately returned from deployment to a combat zone or combat support posting,  
13 shall be granted additional excused absences at the discretion of the local education agency  
14 superintendent to visit with the student's parent or legal guardian relative to such leave or  
15 deployment of the parent or guardian.

## 16 ARTICLE VI. ELIGIBILITY

### 17 A. Eligibility for enrollment:

18 (1) Special power of attorney, relative to the guardianship of a child of a military family  
19 and executed under applicable law shall be sufficient for the purposes of enrollment  
20 and all other actions requiring parental participation and consent.

21 (2) A local education agency shall be prohibited from charging local tuition to a  
22 transitioning military child placed in the care of a non-custodial parent or other  
23 person standing in loco parentis who lives in a jurisdiction other than that of the  
24 custodial parent.

(3) A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which the child was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

## ARTICLE VII. GRADUATION

In order to facilitate the on-time graduation of children of military families:

A. Waiver requirements - Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams - States shall accept:

- (1) Exit or end-of-course exams required for graduation from the sending state;
- or
- (2) National normreferenced achievement tests; or
- (3) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in the senior year, then the provisions of paragraph C of this article shall apply.

1 C. Transfers during senior year - Should a military student transferring at the beginning  
2 or during the senior year be ineligible to graduate from the receiving local education  
3 agency after all alternatives have been considered, the sending and receiving local  
4 education agencies shall ensure the receipt of a diploma from the sending local  
5 education agency, if the student meets the graduation requirements of the sending  
6 local education agency. In the event that one of the states in question is not a member  
7 of this compact, the member state shall use best efforts to facilitate the on-time  
8 graduation of the student in accordance with paragraphs A and B of this article.

9 ARTICLE VIII. STATE COORDINATION

10 A. Each member state, through the creation of a state council or use of an existing body or  
11 board, shall provide for the coordination among its agencies of government, local education  
12 agencies and military installations concerning the state's participation in, and compliance with,  
13 this compact and interstate commission activities. While each member state may determine the  
14 membership of its own state council, its membership must include: The commissioner of  
15 education, a superintendent of a school district with a high concentration of military children,  
16 a representative from a military installation, one representative each from the legislative and  
17 executive branches of government and other offices and stakeholder groups the state council  
18 deems appropriate. A member state that does not have a school district deemed to contain a high  
19 concentration of military children may appoint a superintendent from another school district to  
20 represent local education agencies on the state council.

21 B. The state council of each member state shall appoint or designate a military family  
22 education liaison to assist military families and the state in facilitating the implementation of  
23 this compact.

24 C. The compact commissioner responsible for the administration and management of the

1 state's participation in the compact shall be appointed by the governor or as otherwise  
2 determined by each member state.

3 D. The compact commissioner and the military family education liaison designated herein  
4 shall be ex-officio members of the state council, unless either is already a full voting member  
5 of the state council.

6 ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR  
7 MILITARY CHILDREN

8 The member states hereby create the "interstate commission on educational opportunity for  
9 military children." The activities of the interstate commission are the formation of public policy  
10 and are a discretionary state function. The interstate commission shall:

11 A. Be a body corporate and joint agency of the member states and shall have all the  
12 responsibilities, powers and duties set forth herein, and such additional powers as  
13 may be conferred upon it by a subsequent concurrent action of the respective  
14 legislatures of the member states in accordance with the terms of this compact.

15 B. Consist of one interstate commission voting representative from each member state  
16 who shall be that state's compact commissioner.

17 (1) Each member state represented at a meeting of the interstate commission is  
18 entitled to one vote.

19 (2) A majority of the total member states shall constitute a quorum for the  
20 transaction of business, unless a larger quorum is required by the bylaws of the  
21 interstate commission.

22 (3) A representative shall not delegate a vote to another member state. In the event  
23 the compact commissioner is unable to attend a meeting of the interstate  
24 commission, the governor or state council may delegate voting authority to

1 another person from their state for a specified meeting.

2 (4) The bylaws may provide for meetings of the interstate commission to be  
3 conducted by telecommunication or electronic communication.

4 C. Consist of ex-officio, non-voting representatives who are members of interested  
5 organizations. Such ex-officio members, as defined in the bylaws, may include but  
6 not be limited to, members of the representative organizations of military family  
7 advocates, local education agency officials, parent and teacher groups, the United  
8 States department of defense, the education commission of the states, the interstate  
9 agreement on the qualification of educational personnel and other interstate compacts  
10 affecting the education of children of military members.

11 D. Meet at least once each calendar year. The chairperson may call additional meetings  
12 and, upon the request of a simple majority of the member states, shall call additional  
13 meetings.

14 E. Establish an executive committee, whose members shall include the officers of the  
15 interstate commission and such other members of the interstate commission as  
16 determined by the bylaws. Members of the executive committee shall serve a one  
17 year term. Members of the executive committee shall be entitled to one vote each.  
18 The executive committee shall have the power to act on behalf of the interstate  
19 commission, with the exception of rulemaking, during periods when the interstate  
20 commission is not in session. The executive committee shall oversee the day-to-day  
21 activities of the administration of the compact including enforcement and compliance  
22 with the provisions of the compact, its bylaws and rules, and other such duties as  
23 deemed necessary. The United States department of defense, shall serve as an ex-  
24 officio, nonvoting member of the executive committee.

1 F. Establish bylaws and rules that provide for conditions and procedures under which  
2 the interstate commission shall make its information and official records available  
3 to the public for inspection or copying. The interstate commission may exempt from  
4 disclosure information or official records to the extent they would adversely affect  
5 personal privacy rights or proprietary interests.

6 G. Public notice shall be given by the interstate commission of all meetings and all  
7 meetings shall be open to the public, except as set forth in the rules or as otherwise  
8 provided in the compact. The interstate commission and its committees may close a  
9 meeting, or portion thereof, where it determines by two-thirds vote that an open  
10 meeting would be likely to:

- 11 (1) Relate solely to the interstate commission's internal personnel practices and  
12 procedures;
- 13 (2) Disclose matters specifically exempted from disclosure by federal and state  
14 statute;
- 15 (3) Disclose trade secrets or commercial or financial information which is  
16 privileged or confidential;
- 17 (4) Involve accusing a person of a crime, or formally censuring a person;
- 18 (5) Disclose information of a personal nature where disclosure would constitute  
19 a clearly unwarranted invasion of personal privacy;
- 20 (6) Disclose investigative records compiled for law enforcement purposes; or
- 21 (7) Specifically relate to the interstate commission's participation in a civil action  
22 or other legal proceeding.

23 H. For a meeting, or portion of a meeting, closed pursuant to this provision, the  
24 interstate commission's legal counsel or designee shall certify that the meeting may

1 be closed and shall reference each relevant exemptible provision. The interstate  
2 commission shall keep minutes which shall fully and clearly describe all matters  
3 discussed in a meeting and shall provide a full and accurate summary of actions  
4 taken, and the reasons therefore, including a description of the views expressed and  
5 the record of a roll call vote. All documents considered in connection with an action  
6 shall be identified in such minutes. All minutes and documents of a closed meeting  
7 shall remain under seal, subject to release by a majority vote of the interstate  
8 commission.

9 I. The interstate commission shall collect standardized data concerning the educational  
10 transition of the children of military families under this compact as directed through  
11 its rules which shall specify the data to be collected, the means of collection and data  
12 exchange and reporting requirements. Such methods of data collection, exchange and  
13 reporting shall, in so far as is reasonably possible, conform to current technology and  
14 coordinate its information functions with the appropriate custodian of records as  
15 identified in the bylaws and rules.

16 J. The interstate commission shall create a process that permits military officials,  
17 education officials and parents to inform the interstate commission if and when there  
18 are alleged violations of the compact or its rules or when issues subject to the  
19 jurisdiction of the compact or its rules are not addressed by the state or local  
20 education agency. This section shall not be construed to create a private right of  
21 action against the interstate commission or any member state.

## 22 ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

23 The interstate commission shall have the power to:

24 A. Provide for dispute resolution among member states.

- 1       B.     Promulgate rules and take all necessary actions to effect the goals, purposes and  
2             obligations as enumerated in this compact. The rules shall have the force and effect  
3             of statutory law and shall be binding in the compact states to the extent and in the  
4             manner provided in this compact.
- 5       C.     Issue, upon request of a member state, advisory opinions concerning the meaning or  
6             interpretation of the interstate compact, its bylaws, rules and actions.
- 7       D.     Enforce compliance with the compact provisions, the rules promulgated by the  
8             interstate commission, and the bylaws, using all necessary and proper means,  
9             including, but not limited to, the use of judicial process.
- 10      E.     Establish and maintain offices which shall be located within one or more of the  
11             member states.
- 12      F.     Purchase and maintain insurance and bonds.
- 13      G.     Borrow, accept, hire or contract for services of personnel.
- 14      H.     Establish and appoint committees including, but not limited to, an executive  
15             committee as required by article IX, which shall have the power to act on behalf of  
16             the interstate commission in carrying out its powers and duties hereunder.
- 17      I.     Elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix  
18             their compensation, define their duties and determine their qualifications; and to  
19             establish the interstate commission's personnel policies and programs relating to  
20             conflicts of interest, rates of compensation, and qualifications of personnel.
- 21      J.     Accept any and all donations and grants of money, equipment, supplies, materials  
22             and services, and to receive, utilize, and dispose of it.
- 23      K.     Lease, purchase, accept contributions or donations of, or otherwise to own, hold,  
24             improve or use any property, real, personal or mixed.

- 1 L. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of  
2 any property, real, personal or mixed.
- 3 M. Establish a budget and make expenditures.
- 4 N. Adopt a seal and bylaws governing the management and operation of the interstate  
5 commission.
- 6 O. Report annually to the legislatures, governors, judiciary, and state councils of the  
7 member states concerning the activities of the interstate commission during the  
8 preceding year. Such reports shall also include any recommendations that may have  
9 been adopted by the interstate commission.
- 10 P. Coordinate education, training and public awareness regarding the compact, its  
11 implementation and operation for officials and parents involved in such activity.
- 12 Q. Establish uniform standards for the reporting, collecting and exchanging of data.
- 13 R. Maintain corporate books and records in accordance with the bylaws.
- 14 S. Perform such functions as may be necessary or appropriate to achieve the purposes  
15 of this compact.
- 16 T. Provide for the uniform collection and sharing of information between and among  
17 member states, schools and military families under this compact.

18 ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE

19 COMMISSION

- 20 A. The interstate commission, by a majority of the members present and voting, within  
21 twelve months after the first interstate commission meeting, shall adopt bylaws to govern its  
22 conduct as may be necessary or appropriate to carry out the purposes of the compact, including,  
23 but not limited to:

- 24 (1) Establishing the fiscal year of the interstate commission;

- 1       (2)   Establishing an executive committee, and such other committees as may be  
2           necessary;
- 3       (3)   Providing for the establishment of committees and for governing any general or  
4           specific delegation of authority or function of the interstate commission;
- 5       (4)   Providing reasonable procedures for calling and conducting meetings of the interstate  
6           commission, and ensuring reasonable notice of each such meeting;
- 7       (5)   Establishing the titles and responsibilities of the officers and staff of the interstate  
8           commission;
- 9       (6)   Providing a mechanism for concluding the operations of the interstate commission  
10          and the return of surplus funds that may exist upon the termination of the compact  
11          after the payment and reserving of all of its debts and obligations; and
- 12      (7)   Providing "start up" rules for initial administration of the compact.

13       B. The interstate commission, by a majority of the members, shall elect annually from  
14      among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have  
15      such authority and duties as may be specified in the bylaws. The chairperson or, in the  
16      chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the  
17      interstate commission. The officers so elected shall serve without compensation or remuneration  
18      from the interstate commission. Subject to the availability of budgeted funds, the officers shall  
19      be reimbursed for ordinary and necessary costs and expenses incurred by them in the  
20      performance of their responsibilities as officers of the interstate commission.

21       C. Executive Committee, Officers and Personnel

- 22      (1)   The executive committee shall have such authority and duties as may be set forth in  
23          the bylaws, including but not limited to:  
24          (a)   Managing the affairs of the interstate commission in a manner consistent with

1 the bylaws and purposes of the interstate commission;

2 (b) Overseeing an organizational structure within, and appropriate procedures for  
3 the interstate commission to provide for the creation of rules, operating  
4 procedures, and administrative and technical support functions; and

5 (c) Planning, implementing, and coordinating communications and activities with  
6 other state, federal and local government organizations in order to advance the  
7 goals of the interstate commission.

8 (2) The executive committee may, subject to the approval of the interstate commission,  
9 appoint or retain an executive director for such period, upon such terms and  
10 conditions and for such compensation, as the interstate commission may deem  
11 appropriate. The executive director shall serve as secretary to the interstate  
12 commission, but shall not be a member of the interstate commission. The executive  
13 director shall hire and supervise such other persons as may be authorized by the  
14 interstate commission.

15 D. The interstate commission's executive director and its employees shall be immune from  
16 suit and liability, either personally or in their official capacity, for a claim for damage to or loss  
17 of property or personal injury or other civil liability caused by or arising out of or relating to an  
18 actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis  
19 for believing occurred, within the scope of interstate commission employment, duties, or  
20 responsibilities; provided, that such person shall not be protected from suit or liability for  
21 damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of  
22 such person.

23 (1) The liability of the interstate commission's executive director and employees or  
24 interstate commission representatives, acting within the scope of such person's

1 employment or duties for acts, errors, or omissions occurring within such person's  
2 state may not exceed the limits of liability set forth under the constitution and laws  
3 of that state for state officials, employees, and agents. The interstate commission is  
4 considered to be an instrumentality of the states for the purposes of any such action.  
5 Nothing in this subsection shall be construed to protect such person from suit or  
6 liability for damage, loss, injury, or liability caused by the intentional or willful and  
7 wanton misconduct of such person.

8 (2) The interstate commission shall defend the executive director and its employees and,  
9 subject to the approval of the attorney general or other appropriate legal counsel of  
10 the member state represented by an interstate commission representative, shall defend  
11 such interstate commission representative in any civil action seeking to impose  
12 liability arising out of an actual or alleged act, error or omission that occurred within  
13 the scope of interstate commission employment, duties or responsibilities, or that the  
14 defendant had a reasonable basis for believing occurred within the scope of interstate  
15 commission employment, duties, or responsibilities, provided that the actual or  
16 alleged act, error, or omission did not result from intentional or willful and wanton  
17 misconduct on the part of such person.

18 (3) To the extent not covered by the state involved, member state, or the interstate  
19 commission, the representatives or employees of the interstate commission shall be  
20 held harmless in the amount of a settlement or judgment, including attorney's fees  
21 and costs, obtained against such persons arising out of an actual or alleged act, error,  
22 or omission that occurred within the scope of interstate commission employment,  
23 duties, or responsibilities, or that such persons had a reasonable basis for believing  
24 occurred within the scope of interstate commission employment, duties, or

responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the "model state administrative procedure act," of 1981 Act, uniform laws annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## ARTICLE XIII. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

### A. Oversight

(1) The executive, legislative and judicial branches of state government in each member

1 state shall enforce this compact and shall take all actions necessary and appropriate  
2 to effectuate the compact's purposes and intent. The provisions of this compact and  
3 the rules promulgated hereunder shall have standing as statutory law.

4 (2) All courts shall take judicial notice of the compact and the rules in any judicial or  
5 administrative proceeding in a member state pertaining to the subject matter of this  
6 compact which may affect the powers, responsibilities or actions of the interstate  
7 commission.

8 (3) The interstate commission shall be entitled to receive all service of process in any  
9 such proceeding, and shall have standing to intervene in the proceeding for all  
10 purposes. Failure to provide service of process to the interstate commission shall  
11 render a judgment or order void as to the interstate commission, this compact or  
12 promulgated rules.

13 B. Default, Technical Assistance, Suspension and Termination - If the interstate commission  
14 determines that a member state has defaulted in the performance of its obligations or  
15 responsibilities under this compact, or the bylaws or promulgated rules, the interstate  
16 commission shall:

17 (1) Provide written notice to the defaulting state and other member states, of the nature  
18 of the default, the means of curing the default and any action taken by the interstate  
19 commission. The interstate commission shall specify the conditions by which the  
20 defaulting state must cure its default.

21 (2) Provide remedial training and specific technical assistance regarding the default.

22 (3) If the defaulting state fails to cure the default, the defaulting state shall be terminated  
23 from the compact upon an affirmative vote of a majority of the member states and all  
24 rights, privileges and benefits conferred by this compact shall be terminated from the

effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(7) The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

#### C. Dispute Resolution

(1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The interstate commission shall promulgate a rule providing for both mediation and

1 binding dispute resolution for disputes as appropriate.

2 D. Enforcement

3 (1) The interstate commission, in the reasonable exercise of its discretion, shall enforce  
4 the provisions and rules of this compact.

5 (2) The interstate commission, by majority vote of the members, may initiate legal action  
6 in the United States district court for the District of Columbia or, at the discretion of  
7 the interstate commission, in the federal district where the interstate commission has  
8 its principal offices, to enforce compliance with the provisions of the compact, its  
9 promulgated rules and bylaws, against a member state in default. The relief sought  
10 may include both injunctive relief and damages. In the event judicial enforcement is  
11 necessary the prevailing party shall be awarded all costs of such litigation including  
12 reasonable attorney's fees.

13 (3) The remedies herein shall not be the exclusive remedies of the interstate commission.  
14 The interstate commission may avail itself of any other remedies available under state  
15 law or the regulation of a profession.

16 ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

17 A. The interstate commission shall pay, or provide for the payment of the reasonable  
18 expenses of its establishment, organization and ongoing activities.

19 B. The interstate commission may levy on and collect an annual assessment from each  
20 member state to cover the cost of the operations and activities of the interstate commission and  
21 its staff which must be in a total amount sufficient to cover the interstate commission's annual  
22 budget as approved each year. The aggregate annual assessment amount shall be allocated based  
23 upon a formula to be determined by the interstate commission, which shall promulgate a rule  
24 binding upon all member states.

1 C. The interstate commission shall not incur obligations of any kind prior to securing the  
2 funds adequate to meet the same. The interstate commission shall not pledge the credit of any  
3 of the member states, except by and with the authority of the member state.

4 D. The interstate commission shall keep accurate accounts of all receipts and disbursements.  
5 The receipts and disbursements of the interstate commission shall be subject to the audit and  
6 accounting procedures established under its bylaws. All receipts and disbursements of funds  
7 handled by the interstate commission shall be audited yearly by a certified or licensed public  
8 accountant and the report of the audit shall be included in and become part of the annual report  
9 of the interstate commission.

10 ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

11 A. Any state is eligible to become a member state.

12 B. The compact shall become effective and binding upon legislative enactment of the  
13 compact into law by no less than ten of the states. The effective date shall be no earlier than  
14 December 1, 2007. Thereafter it shall become effective and binding as to any other member  
15 state upon enactment of the compact into law by that state. The governors of nonmember states  
16 or their designees shall be invited to participate in the activities of the interstate commission on  
17 a non-voting basis prior to adoption of the compact by all states.

18 C. The interstate commission may propose amendments to the compact for enactment by  
19 the member states. No amendment shall become effective and binding upon the interstate  
20 commission and the member states unless and until it is enacted into law by unanimous consent  
21 of the member states.

22 ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

23 A. Withdrawal

24 (1) Once effective, the compact shall continue in force and remain binding upon each

1 and every member state. A member state may withdraw from the compact  
2 specifically repealing the statute, which enacted the compact into law.

3 (2) Withdrawal from this compact shall be by the enactment of a statute repealing the  
4 same, but shall not take effect until one year after the effective date of such statute  
5 and until written notice of the withdrawal has been given by the withdrawing state  
6 to the governor of each other member jurisdiction.

7 (3) The withdrawing state immediately shall notify the chairperson of the interstate  
8 commission in writing upon the introduction of legislation repealing this compact in  
9 the withdrawing state. The interstate commission shall notify the other member states  
10 of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

11 (4) The withdrawing state is responsible for all assessments, obligations and liabilities  
12 incurred through the effective date of withdrawal, including obligations, the  
13 performance of which extend beyond the effective date of withdrawal.

14 (5) Reinstatement following withdrawal of a member state shall occur upon the  
15 withdrawing state reenacting the compact or upon such later date as determined by  
16 the interstate commission.

17 B. Dissolution of Compact

18 (1) This compact shall dissolve effective upon the date of the withdrawal or default of  
19 the member state which reduces the membership in the compact to one member state.

20 (2) Upon the dissolution of this compact, the compact becomes null and void and shall  
21 be of no further force or effect, and the business and affairs of the interstate  
22 commission shall be concluded and surplus funds shall be distributed in accordance  
23 with the bylaws.

24 ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

1       A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or  
2       provision is deemed unenforceable, the remaining provisions of the compact shall be  
3       enforceable.

4       B. The provisions of this compact shall be liberally construed to effectuate its purposes.

5       C. Nothing in this compact shall be construed to prohibit the applicability of other interstate  
6       compacts to which the states are members.

7               ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

8       A. Other Laws

9       (1)    Nothing herein prevents the enforcement of any other law of a member state that is  
10       not inconsistent with this compact.

11       (2)    All member states' laws conflicting with this compact are superseded to the extent  
12       of the conflict.

13       B. Binding Effect of the Compact

14       (1)    All lawful actions of the interstate commission, including all rules and bylaws  
15       promulgated by the interstate commission, are binding upon the member states.

16       (2)    All agreements between the interstate commission and the member states are binding  
17       in accordance with their terms.

18       (3)    In the event any provision of this compact exceeds the constitutional limits imposed  
19       on the legislature of any member state, such provision shall be ineffective to the  
20       extent of the conflict with the constitutional provision in question in that member  
21       state.

22       Section 2. The Governor shall appoint this state's representative to the interstate commission  
23       on educational opportunity for military children created in section 1 of this Act.